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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/470,452	12/22/1999	JOHN G. POSA	POS-01102/29	6162
7590 10/22/2003			EXAMINER	
JOHN G POSA ESQ GIFFORD KRASS GROH SPRINKLE ANDERSON & CITKOWSKI PC 280 N OLD WOODWARD AVENUE SUITE 400 BIRMINGHAM, MI 48009			VO. HAI	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 10/22/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/470,452

Applicant(s)

POSA ET AL.

Examiner

Hai Vo

Art Unit

1771

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 September 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 20-23.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

DANIEL ZIRKER
PRIMARY EXAMINER
GROUP 1900
1700



Continuation of 5. does NOT place the application in condition for allowance because: The art rejections have been maintained for the following reasons. The arguments that nothing is flexible about the brittle layer of Heilman are not found persuasive. Heilman discloses that the brittle layer 44 is formed from a tough and flexible polyacrylate allowing it to withstand shipping and handling abuse (column 3, lines 55-60). Further, there is irrelevant for Heilman to address the brittle layer to be a flexible material because the admitted prior art already discloses that the backing layer of the conventional adhesive tape is made of a flexible material. Heilman discloses that the rupture of the fluorescent dye in the brittle layer due to a mechanical action leads to the irreversible color change. Heilman teaches exactly what is going to happen to the backing layer of the claimed adhesive tape and how the edge of the tape is glowing when the tape is cut or torn. As referred to the last paragraph of page 9 of Applicants specification, when the tape is cut or torn, microcapsules of the fluorescent dye within the backing layer are broken to generate a color change of the adhesive tape. Although such functional language has not been included in the claims, the examiner believes that it is necessary and thus obvious for the skilled artisan to look to the teaching in Heilman when faced with the problem of providing a mean for detecting the free edge of a body of rolled adhesive tape. Applicants argue that an adhesive tape modified by Heilman would not be structurally the same as Applicants' invention. The arguments are not found persuasive. The admitted prior art teaches each and every element of the claimed subject matter except the fluorescent material in the backing layer (figure 1, page 5, lines 10-18 of Applicants' specification). The use of the fluorescent material in the backing layer as taught in Heilman is to provide an irreversible color change at the edge of the tape when the tape is cut, which is the same mechanisms through which the color change is generated in the claimed invention.

The arguments that Heilman does not specifically disclose a fluorescein dye are not found persuasive. Heilman discloses a color change system including a brittle layer 44 formed of a flexible material and being colored with a fluorescent dye (column 4, lines 5-10). In response to applicant's argument that Krasieva is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Krasieva teaches a sufficient amount of the Fluorescent dye to provide the backing layer a desired optical density for sufficient illumination. That is exactly the problem with which the applicant was concerned. The arguments that Krasieva does not specifically disclose that the white light optical of the backing layer is at least 90% of what the white light optical of the backing layer would be in the absence of the fluorescent material are not found persuasive. Krasieva discloses optical density is the standard measure of quantifying an amount of a fluorescent material (column 42, lines 42-43). Krasieva further discloses the amount of each dye used to obtain the desired optical density for sufficient illumination (column 43, lines 5-30). It appears that desired optical density of the backing layer should be at least of 90% so that the edge of the tape is glowing when the tape is cut in accordance with Applicants' specification. It is not seen that the amount of the fluorescent dye disclosed in Krasieva would have outside the claimed range when the fluorescent dye has an optical density for sufficient illumination. Therefore, it is the examiner's position that the amount of the fluorescent material disclosed in Krasieva should inherently be within the claimed range to obtain the desired optical density for sufficient illumination. The combination of Krasieva with the primary and secondary references is proper and therefore, the art rejections are sustained.